The true situation as to the question of fraud seems to be given in the dissenting opinion of Clark, J., which we give in part:[15]

> "I cannot see how any fraud could have been perpetrated on the plaintiff by the old gentleman's deeding the property in question to his son before plaintiff's marriage to the father was ever thought of. If the plaintiff and her present husband had been engaged to be married at the time of the conveyance, the case of *Youngs* v. *Carter*, 10 Hun. 194, would be in point.
>
> "I cannot see where that case is any authority for plaintiff here, for the facts are not similar. There the plaintiff and the grantor were actually engaged to be married when the deed was made. Here there was no such relationship, and so far as I can discover in the record, when the deed of the Front Street property was made to the son, Reuben Melenky did not even know plaintiff, to say nothing about being engaged to marry her. * * *
>
> "Under the facts as set forth in the complaint, and conceded by the demurrer, I cannot see, where at the time the deed in question was made, plaintiff had any 'rights' which could in any way be affected by the conveyance. She was a stranger to the transaction, and at that time was evidently a stranger to all the parties."

The view expressed in this dissenting opinion seems to be the sound one. Although there is no case directly in point, all the authorities assert that "actual" fraud will always vitiate an antenuptial voluntary conveyance when it deprives the wife of her dower right, but that "constructive" fraud will only be predicated upon the conveyance by the husband of his real property after he has become engaged to marry his intended wife. If the rule were otherwise, there would be no limit on the restriction of a man's conveying land before his marriage, and it would surely make for injustice and uncertainty.

F. W. D.

ADMIRALTY JURISDICTION OVER CONTRACTS TO RECONSTRUCT VESSEL FOR NEW FUNCTION.—As a general rule, contracts are subject to admiralty jurisdiction and are considered maritime when they relate to a ship as an instrument of commerce or navigation, intended to be so used, or when they facilitate its use as such. Thus, it was considered by the Court in *Wortman* v. *Griffith*,[1] which was a suit by the owner of a ship yard for the use of his marine ways by the vessel, that the nature of the contract or service, and not the question of whether the contract was made

[15] 189 N. Y. Supp. 803.
[1] 30 Fed. Cas. 649.

or the service rendered on land or on water, was the proper test in determining admiralty and jurisdiction.

However, ever since the case of *People's Ferry Co.* v. *Beers,* [2] the Federal Courts have uniformly held that a contract for building a ship was non-maritime and that admiralty courts had no jurisdiction. But it is significant to note that this view is opposed to the prevailing opinion of ancient authorities on maritime law and to modern continental codes.[3]

Contracts for repairing or furnishing supplies and equipment to *completed* vessels are considered maritime by all authorities.[4] The distinguishing point between these two holdings seems, according to Hanford, J., in *The Manhattan,*[5] to be this: one class, "founded upon contracts for the building of *proposed* vessels, holds such contracts to be non-maritime, because they touch maritime subjects only by relation to *proposed* vessels, the future existence of which is contingent upon performance of the terms of the contract in each case," while the other class, "founded upon contracts for the repairing and rebuilding of vessels, holds such contracts to be maritime, because they affect vessels *in esse*". (Italics ours.)

It has been held that the materials of which a vessel is composed become a ship as soon as the structure leaves the ways and her keel strikes the element for which she was originally designed. Thereafter, all contracts to equip, furnish, or repair this machine have direct reference to a vessel *in esse* with capacity for locomotion and transportation, and are therefore maritime.[6]

An interesting and important question arises when a ship which has been used for one purpose as an instrument of navigation is subsequently reconstructed to make it suitable for a different maritime function. Should the contract to reconstruct be considered maritime in its nature or should it be held analogous to *People's Ferry Co.* v. *Beers?*

Two cases on this point have arisen in the lower Federal Courts, and in each instance the court has held that the contract was non-maritime.

Thus, in *McMaster* v. *One Dredge,*[7] a contract for converting a scow into a dredge was held to be merely one for the building of the dredge and hence non-maritime in character. Bellinger, D. J., in part said:

> "It can make no difference whether the scow was already built, and had theretofore been used for another purpose, or whether it was newly constructed for the purposes of a

[2] 20 How. 393; Edwards *v.* Elliott, 21 Wall. 532.
[3] BENEDICT'S ADMIRALTY (4th Ed.) p. 144.
[4] The St. Lawrence, 1 Black. 522; Peyroux *v.* Howard, 7 Pet. 324; Northern Pacific Steamship Co. *v.* Hall, 249 U. S. 119.
[5] 46 Fed. 797.
[6] The Eliza Ladd, 8 Fed. Cas. 491.
[7] 95 Fed. 832.

> dredge * * *. It was only for the purposes of a dredge, which, in its relation with the scow, was a new thing, that the work and labor in this case were performed, and the materials furnished * * *."

The Court also seemed to place great reliance upon the following portion of the opinion in *The Paradox*: [8]

> "When the vessel is completed for the purpose intended, then the vessel is 'built', and not till then * * *, and whatever is supplied to such a vessel for the purpose of making it what it was intended to be, and to enable it to enter upon the kind of business or navigation intended, is a part of the 'building' of the vessel."

In the recent case of *The Geo. L. Harvey*,[9] contracts were made to convert a submarine chaser, after its sale by the Navy Department, into a fishing vessel. It was held that the contracts were not within admiralty jurisdiction. The reasoning upon which the conclusion of the Court was based may be indicated by a quotation from the opinion:

> "The war vessel was not related to any rights and duties pertaining to commerce, navigation, and trade, and not until she was fitted suitably for such business was she constructed, and not until the necessary labor and materials were supplied and furnished was the vessel qualified to enter into the service of navigation and trade."

The Court also relied upon *McMaster* v. *One Dredge, supra,* and upon the holding of the United States Supreme Court in *Thames Towboat Co.* v. *Schooner Francis McDonald* [10] that agreements made after the hull of an unfinished vessel is in the water for the work and material necessary to consummate a partial construction and bring the vessel into condition for the function intended are non-maritime.

The McMaster Case and the Harvey Case seem open to just and important criticisms. The basis for considering contracts to construct entirely new ships non-maritime is that they are not nearly enough related to any rights and duties pertaining to commerce or navigation.[11] Nothing tangible of a maritime nature exists with which the contracts could be intimately associated. The vessels themselves, future instruments of navigation and the sole bases for any claim to maritime character, were, when the contracts were made, but creatures of the imagination.

However, in both of the above cases, the vessels had already been completed for one purpose and used as instruments of naviga-

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[8] 61 Fed. 860.
[9] 273 Fed. 972.
[10] 254 U. S. 242.
[11] Thames Towboat Co. *v.* Schooner Francis McDonald, *supra.*

tion before the contracts to convert them into vessels for a different function were made. Thus, these contracts to convert were made with reference to vessels already complete and in use and hence were certainly closely enough related to something tangible of a maritime nature. Inasmuch as the reasons for holding a contract to construct non-maritime are entirely absent, it would appear that the contract to convert should be considered of a maritime character and subject to admiralty jurisdiction.

The reliance placed in the McMaster Case upon the holding in The Paradox Case seems misplaced, as in the latter case the contract was for the construction of a vessel *not yet completed* in order to enable it to enter upon the kind of business or navigation intended.

In the Harvey Case, the Court maintained that the submarine chaser had not been subject to admiralty jurisdiction, as "upon launching" it "was foreign to commerce and trade." The Court continues: "It was not subject to admiralty jurisdiction, and before she would be subject to admiralty she must be divested of the attributes of war, and clothed with the conveniences and necessities of commerce and trade."

But to apply as a test of admiralty jurisdiction the engaging in commerce and trade seems inopportune. Admiralty jurisdiction is an entirely distinct and separate thing from the power of congress to regulate commerce. Neither depends at all upon the other.[12] Vessels, such as pleasure yachts, have been uniformly held subject to admiralty jurisdiction, though it can hardly be said that they are engaged in commerce and trade. The reason why a vessel of the United States government is not subject to suits *in rem* in admiralty or to seizure by the marshal would appear to be that the property of a government, while in its possession and employed in or devoted to the public use, is exempt from judicial process on the ground that the exercise of such jurisdiction would be inconsistent with the independence of the sovereign authority and the necessities of the public service.[13]

Thus, it would appear upon reason and principle that a contract to convert a vessel which has already been completed and used for one purpose in navigation, so that it may be employed for a different design, should be considered a maritme contract and subject to admiralty jurisdiction.

S. B. W.

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[12] The Commerce, 1 Black. 574.

[13] The Exchange, 7 Cranch 116. See Long *v.* The Tampico, 16 Fed. 491.